

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 7th February, 2012

Pronounced on: 9th February, 2012

+ **MAC. APP. No.341/2011 & CM. APPL 7604/2011 (stay)**

M/S. THE UNITED INDIA INSURANCE CO. LTD.

..... Appellant

Through: Mr. D.D. Singh & Mr. Navdeep
Singh, Advocates

Versus

SMT. LALITA DEVI & ORS.

..... Respondents

Through: Mr. Kundan Kumar Lal,
Advocate for Respondent No.5

CORAM:

HON'BLE MR. JUSTICE G.P.MITTAL

J U D G M E N T

G. P. MITTAL, J.

1. This Appeal is for reduction of compensation of ₹ 9,37,448/- awarded for the death of Pardeip Kumar Parshad who was aged 24 years on the date of the accident which occurred on 28.04.2010.
2. During inquiry before the Tribunal, it was claimed that the deceased was working as a tailor in export line since 2005. He was earning ₹400/- to 480/- per day (₹12000/- to 14,400/- per month). He died as a bachelor. In the absence of any documentary evidence with regard to the deceased's income,

the Tribunal took the minimum wages of a matriculate(as the deceased was also a matriculate) as ₹6,448/-, added 50% towards indexation and increase in minimum wages on the basis of the judgment of this Court in the *National Insurance Company Ltd. V. Kailash Devi, II(2008) ACC 770*, applied the multiplier of 14 as per the age of the deceased's mother to compute the loss of dependency, deducted 50% towards personal and living expenses as ₹8,12,448/-, added ₹1 lakh towards loss of love and affection and ₹25,000/- towards funeral expenses to award an overall compensation of ₹9,37,448/-.

3. The contentions raised on behalf of the Appellant United India Insurance Co. Ltd. are:
 - i) The increase of 50% towards minimum wages was not permissible as an increase can be given only for future prospects where there is evidence to this effect; and
 - ii) The compensation of ₹1 lakh awarded towards loss of love and affection is on the higher side.
4. The deceased passed his high school examination in the year 2002 as is evident from the photocopy of the matriculation certificate placed on the record. In support of their claim, the Respondents No.1 & 2 filed an affidavit Ex.PW1/A of Madan Prashad, the deceased's father. He testified that the deceased was doing the job of a tailor in export line since the year 2005. He deposed that the deceased was covered under ESI and had

an ESI card for the period 2005-07(Mark B). He deposed that at the time of the accident, he was working as a tailor with a Fabricator at F-9, Udhyog Nagar, Peera Garhi, Delhi. It was claimed that the deceased was working on piece rate basis i.e. ₹40/- per piece and was sewing 10 to 12 pieces every day and earning ₹400/- to 480/- per day or ₹12,000/- to 14,400/- per month. In cross-examination, a suggestion was given on behalf of the Insurance Company and PW1 Madan Parshad admitted that he did not have any proof about the deceased's income of ₹12,000/- to 14,000/- per month. At the same time, it is important to note that PW1 gave the details of the work being carried by his son (the deceased) i.e. working on piece rate basis, the rate per piece being paid to him and what was his earning per day and per month on the piece rate basis. This part of the testimony of the PW1 (i) that the deceased was working as a tailor in export line with a Fabricator; and (ii) that he was sewing 10 to 12 pieces per day and was being paid @ ₹40/- per piece i.e. ₹400/- to 480/- per day was also not challenged in cross-examination. The Tribunal in the absence of any documentary evidence with regard to the deceased's income, took the minimum wages of a skilled worker and added 50% towards indexation. The deceased's income was taken to be ₹9,672/- per month on making the addition of 50%. Thus, addition of 50% where minimum wages have been applied cannot be faulted in view of the judgments of this Court on this aspect.

5. In *National Insurance Company Ltd. v. Renu Devi & Ors., III (2008) ACC 134*, this Court held that the increase in the minimum wages is not on account of promotion of an unskilled worker or on account of advancement in his career but the same is due to increase in the price index and cost of living. It has also to be borne in mind that the minimum wages are revised not only to meet the inflation but also to improve the standard of living of the lowest paid workers and to give them benefit of growth in GDP.
6. Similar view was taken by this Court in *Narinder Bishal & Anr. v. Rambir Singh & Ors., 2009 ACJ 1881; UPSRTC v. Munni Devi, IV (2009) ACC 879; and Vinod Kumar Bansal v. Ranbir Singh & Ors., 2011 ACJ 1672 (Delhi)*.
7. A perusal of the Notifications issued under the Minimum Wages Act would show that the minimum wages of an unskilled worker were revised from ₹ 3470/- as on 1.02.2007 to ₹ 6,422/- on 01.04.2011. Thus, it has to be noticed that there was an increase of more than 90% in the minimum wages in just four years. This was not on account of inflation but to provide a better standard of living to the lowest paid workers.
8. It has to be borne in mind that under Section 168 of the Motor Vehicles Act, the Tribunal is to conduct an inquiry to arrive at the figure of just and proper compensation to be awarded to the victims of the accident. As I have already discussed above, PW1's testimony regarding the job of a tailor

being carried out by the deceased on piece rate basis with an exporter was not challenged. In the circumstances, it could be estimated that the deceased was earning at least ₹9,600/- per month. Thus, the income of the deceased on actual basis cannot be said to be less than the minimum wages increased by 50%. Thus, the grant of compensation taking the deceased's income to be ₹9,672/- per month cannot be faulted.

9. The compensation of ₹1,00,000/- awarded by the Claims Tribunal towards the loss of love and affection was on the higher side. Loss of love and affection can never be measured in terms of money. Thus, uniformity has to be adopted by the Courts while granting non-pecuniary damages. The Supreme Court in *Sunil Sharma v. Bachitar Singh* (2011) 11 SCC 425 and in *Baby Radhika Gupta v. Oriental Insurance Company Limited* (2009) 17 SCC 627 granted only ₹ 25,000/- (in total to all the claimants) under the head of loss of love and affection. Thus, I would reduce the compensation under this head to ₹ 25,000/- only instead of ₹1,00,000/-. The award of funeral expenses is reduced from ₹25,000/- to ₹10,000/-.
10. The overall compensation stands reduced from ₹ 9,37,448/- to ₹8,47,448/-.
11. The excess amount along with the interest earned, if any, during the pendency of the Appeal shall be refunded to the Appellant Insurance Company. The amount awarded in favour of the First and the Second Respondents shall be disbursed/held in Fixed

Deposit in the manner as directed by the Claims Tribunal in the impugned order.

12. The Appeal is allowed in above terms.
13. The statutory amount, if any, deposited by the Appellant Insurance Company shall be returned.

(G.P. MITTAL)
JUDGE

FEBRUARY 09 , 2012

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